

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
THE PALOMBO GROUP, INC.,

08-Civ. 3153 (CLB)

Plaintiff,

**REPLY TO COUNTERCLAIMS**

-against-

CRYSTAL BEACH DEVELOPMENT CORP.,

Defendant.

-----X

The Plaintiff, The Palombo Group, Inc. (hereinafter "Plaintiff"), by and through its attorneys, Corbally, Gartland and Rappleyea, LLP, as and for its Reply to the Counterclaims contained in the Answer of the Defendant, Crystal Beach Development Corp. (hereinafter "Defendant"), respectfully states and responds as follows:

**AS TO THE DEFENDANT'S FIRST COUNTERCLAIM**

1. The Plaintiff denies each and every allegation contained in Paragraph "42" of the Defendant's Answer with Counterclaims.
2. The Plaintiff denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph "43" of the Defendant Answer with Counterclaims other than the Contract between the parties states that the Defendant's principal place of business is located at 46 Westchester Ave., New York, New York 10576.
3. The Plaintiff admits each and every allegation contained in Paragraph "44" and "46" of the Defendant's Answer with Counterclaims.
4. With regard to Paragraph "45" of the Defendant's Answer with Counterclaims, the Plaintiff respectfully refers all matters of law to the Court.

5. With regard to Paragraph "47" of the Defendant's Answer with Counterclaims, the Plaintiff respectfully refers the court to the Construction Management Agreement (hereinafter the "Agreement") between the parties.

6. The Plaintiff denies each and every allegation contained in Paragraph "48," "49" and "50" of the Defendant's Answer with Counterclaims.

**AS TO THE DEFENDANT'S SECOND COUNTERCLAIM**

7. With regard to Paragraph "51" of the Defendant's Answer with Counterclaims, the Plaintiff repeats and reiterates its responses set forth above.

8. The Plaintiff denies each and every allegation contained in Paragraph "52" and "53" of the Defendant's Answer with Counterclaims.

**AS TO THE DEFENDANT'S THIRD COUNTERCLAIM**

9. With regard to Paragraph "54" of the Defendant's Answer with Counterclaims, the Plaintiff repeats and reiterates its responses set forth above.

10. The Plaintiff denies each and every allegation contained in Paragraph "55" and "56" of the Defendant's Answer with Counterclaims.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

11. The Defendant's Counterclaims fail to state a cause of action upon which relief may be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

12. The Defendant's counterclaims are barred by its own culpable conduct.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

13. The Defendant's Counterclaims are barred by the doctrine of unclean hands.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

14. The Defendant's Counterclaims are barred by the doctrine of payment.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

15. The Defendant's Counterclaims are barred because it did not comply with the terms of the Agreement.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

16. The Defendant's Counterclaims are barred by the doctrine of laches.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

17. The Defendant's Counterclaims are barred by the Statute of Frauds.

**AS AND FOR A EIGTH AFFIRMATIVE DEFENSE**

18. The Defendant's Counterclaims are barred by the fact that the Defendant delayed unreasonably in approving shop drawings and submittals and in furnishing other required approvals for the work and in furnishing the Plaintiff with information necessary for the work to proceed in a timely and efficient fashion.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

19. The Defendant's Counterclaims are barred by the fact that the Defendant delayed unreasonably in obtaining approvals, building permits, and easements required for the Plaintiff's performance.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

20. The Defendant's Counterclaims are barred by the fact that the Defendant directed numerous and repeated changes and redesigns during the course of the Plaintiff's work.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

21. The Defendant's Counterclaims are barred by the fact that the Defendant delayed unreasonably in directing the changes and redesigns it wanted incorporated into the work.

**AS AND FOR AN TWELFTH AFFIRMATIVE DEFENSE**

22. The Defendant's Counterclaims are barred by the fact that the Defendant delayed unreasonably in directing the changes and redesigns it wanted incorporated into the work.

**AS AND FOR AN THIRTEENTH AFFIRMATIVE DEFENSE**

23. The Defendant's Counterclaims are barred by the doctrine of estoppel.

**AS AND FOR AN FOURTEENTH AFFIRMATIVE DEFENSE**

24. The Defendant's Counterclaims are barred by the doctrine of waiver.

**WHEREFORE**, the Plaintiff, The Palombo Group, Inc., respectfully demands judgment as follows:

1. That the Court dismiss the Defendant's Counterclaims in their entirety;
2. That the Court grant the Plaintiff the relief sought in its Complaint; and
3. For such other and further relief as the Court deems just and proper including, but

not limited to, reasonable attorneys' fees and the costs and disbursements of this action.

Dated: Poughkeepsie, New York  
April 16, 2008

Yours, etc.,

**CORBALLY, GARTLAND AND RAPPLEYEA, LLP**

By: 

William W. Frame (WF 9371)

Attorneys for the Plaintiff

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To: Daniel E. Katz, Esq.  
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(212) 684-0300

**AFFIDAVIT OF SERVICE**

**STATE OF NEW YORK )  
                        )ss:  
COUNTY OF DUTCHESS )**

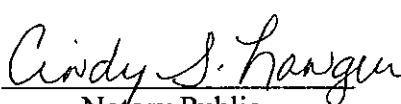
I, Anne Marie Tytlar, being duly sworn deposes and says: I am not a party to this action, I am over 18 years of age and reside in Hopewell Junction, New York.

On April 16, 2008, I served a true copy of a Reply to Counterclaims by mailing the same in a sealed envelope with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

David E. Ktaz, Esq.  
Bauman, Katz & Grill LLP  
28 West 44<sup>th</sup> Street, Suite 600  
New York, New York 10036

  
Anne Marie Tytlar

Sworn to before me this  
16th day of April, 2008

  
Cindy S. Langiu  
Notary Public

CINDY S. LANGIU  
Notary Public, State of New York  
No. 4910631  
Qualified in Dutchess County 2009  
Commission Expires Nov. 16, 19